



[6450-01-P]

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

Limited Public Interest Waiver under the American Recovery and Reinvestment Act of 2009 (Recovery Act)

AGENCY: Office of Energy Efficiency and Renewable Energy, U.S. Department of Energy (DOE).

ACTION: Notice of Limited Waiver

SUMMARY: The U.S. Department of Energy (DOE) is hereby granting a determination of inapplicability (unreasonable cost waiver) of section 1605 of the American Reinvestment and Recovery Act of 2009 (Recovery Act Buy American provisions) to the California Energy Commission, recipient of EECBG grant EE0000905, for the installation of a heating, ventilation, and air conditioning (HVAC) system at the City of La Cañada Flintridge City Hall building.

This waiver applies only to this project.

DATES: Effective Date: September 12, 2012

FOR FURTHER INFORMATION CONTACT: Christine Platt-Patrick, Weatherization and Intergovernmental Program, Office of Energy Efficiency and Renewable Energy (EERE), (202) 287-1553, buyamerican@ee.doe.gov, Department of Energy, 1000 Independence Avenue SW., Mailstop EE-2K, Washington, DC 20585.

SUPPLEMENTARY INFORMATION:

Under the authority of the Recovery Act, section 1605(b)(3), the head of a Federal department or agency may issue a “determination of inapplicability” (a waiver of the Buy American provisions) if the application of section 1605 would represent an ‘unreasonable cost’. The authority of the Secretary of Energy to make all inapplicability determinations was re-delegated to the Assistant Secretary for Energy Efficiency and Renewable Energy (EERE), for EERE projects under the Recovery Act, in Redlegation Order No. 00-002.01E, dated April 25, 2011, for EERE Recovery Act projects.

Pursuant to this delegation, the Assistant Secretary has determined that application of section 1605 restrictions represents an ‘unreasonable cost’ for the project described herein.

Specifically, this unreasonable cost determination waives the Buy American requirements to the California Energy Commission, recipient of EECBG grant EE0000905, for the installation of a heating, ventilation, and air conditioning (HVAC) system at the at the City of La Cañada Flintridge City Hall building.

EERE has developed a robust process to ascertain in a systematic and expedient manner whether or not there is domestic manufacturing capacity for the items submitted for a waiver of the Recovery Act Buy American provision. This process involves a close collaboration with the United States Department of Commerce National Institute of Standards and Technology (NIST) Manufacturing Extension Partnership (MEP), in order

to scour the domestic manufacturing landscape in search of producers before making any nonavailability or unreasonable cost determinations.

The NIST MEP has 59 regional centers with substantial knowledge of, and connections to, the domestic manufacturing sector. MEP uses their regional centers to ‘scout’ for current or potential manufacturers of the product(s) submitted in a waiver request. In the course of this interagency collaboration, MEP has been able to find exact or partial matches for manufactured goods that EERE grantees had been unable to locate. As a result, in those cases, EERE was able to work with the grantees to procure American-made products rather than granting a waiver.

Upon receipt of completed waiver requests for the product in the current waiver, EERE reviewed the information provided and submitted the relevant technical information to the NIST MEP. The MEP then used their network of nationwide centers to scout for domestic manufacturers.

In addition to the MEP collaboration outlined above, the EERE Buy American Team worked with labor unions, trade associations and other manufacturing stakeholders to scout for domestic manufacturing capacity or an equivalent product for the HVAC components contained in this waiver. EERE also conducted significant amounts of independent research to supplement MEP’s scouting efforts.

As a result of EERE's efforts and MEP's scouting process, it was determined that if the described HVAC system was manufactured domestically, it will increase the total project cost by more than 25%.

The subject HVAC Replacement Project entails the replacement of eight (8) package rooftop units (gasheat / electric cool) at the City of La Cañada Flintridge City Hall building. Units are in the range of 2 ½ to 5 tons in cooling capacity. New package units shall be equipped with air-side economizers and new roof curbs. The City solicited bid proposals for the project through a public bid process.

Contract drawings and specifications were created based on a Carrier design (Model 48ES Series) which at the time of document preparation was believed to be manufactured in the United States. A "Product Bulletin" (dated July 26, 2010) from Carrier indicated that the Carrier unit (Model 48ES) was indeed manufactured in America not long ago. Specifically, the subject HVAC unit (48ES) was manufactured at Carrier's plant in Tyler, TX, before recently moving its operation to Mexico.

The primary reason that Carrier (Model 48ES) was used as the basis of design for this project was because the existing units presently serving the City Hall building are also made by Carrier. In an effort to reduce project complexity and installation costs, it was

understood that the proposed units shall have equal (or near equal) dimensions as the existing units. The sure way this would be accomplished is through use of new Carrier units. While other manufacturers may have equal performance characteristics, dimensional data may be significantly different. This includes but is not limited to (a) unit base dimensions / footprint, (b) unit height, (c) supply/return duct openings and dimensions, (d) electrical and natural gas line connection locations and clearances, all of which could impact the project's complexity and costs. The grant recipient provided a mechanical unit schedule (from the Contract Drawings) in the application for a waiver, which includes a comparison of existing and proposed HVAC unit dimensions.

City and Contractor then conducted a survey of the market to find HVAC Packaged Units that meet both the technical specs and the Buy American requirements. Four manufacturers were identified by the City, one was identified by MEP. Accordingly, the City asked the Contractor to provide a price proposal for a change order that would accommodate the domestic units.

In order to accommodate the domestic unit significant work would need to be done to the roof and ductwork. This work would include:

“equipment curbs will be re-leveled using sloped 4x lumber to match the original rooftop duct work bottom layout and be attached to the building structure. 4 of the units will need to be set back to allow for the hookup and transition to the existing duct work. The roof portion from where the existing equipment curb was will be properly re-roofed. Some of

the existing roof ductwork will be demolished and disposed of properly to allow for the hook up of new duct. All 8 units will get new rooftop duct transitions, duct, fittings and duct supports to accommodate the termination from the existing roof duct work to the new HVAC units and economizers. All utilities will be extended to terminate on the new equipment. The existing condensate system will be reconfigured to terminate to the new equipment. A/C #3 will have to have the existing stub ups for the high & low voltage relocated from the underside to accommodate the new equipment curb location and roofed in on completion.” (Contractor’s estimate, April 24, 2012)

The total cost of this additional work would be approximately \$29,770.00. The total cost of the manufactured goods would remain the same, \$52,350.00. The additional cost represents a 56.9% increase in total project costs.

Section 176.110 of Title 2 of the Code of Federal Regulations, entitled “Evaluating proposals of foreign iron, steel, and/or manufactured goods”, states that if “the award official receives a request for an exception based on the cost of certain domestic iron, steel, and/ or manufactured goods being unreasonable, in accordance with § 176.80, then the award official shall apply evaluation factors to the proposal to use such foreign iron, steel, and/or manufactured goods.”

Per that section, the total evaluated cost = project cost estimate + $(.25 \times \text{project cost estimate})$. The total cost of the project including the foreign manufactured HVAC is \$52,350. The total evaluated cost is $\$52,350 + (.25 \times \$52,350)$ or \$65,437.50

The minimum cost for the project with US products is \$82,120, a cost increase of 56%. In light of the foregoing, and under the authority of section 1605(b)(3) of Public Law No. 111–5 and the Re-delegation Order dated April 25, 2011 , with respect to Recovery Act projects funded by EERE, on October 24, 2011, the Acting Assistant Secretary issued a determination of inapplicability (unreasonable cost waiver) of section 1605 of the American Reinvestment and Recovery Act of 2009 (Recovery Act Buy American provisions) to the California Energy Commission, recipient of EECBG grant EE0000905, for the installation of a heating, ventilation, and air conditioning (HVAC) system at the at the City of La Cañada Flintridge City Hall building. This waiver applies only to this project.

This waiver determination was made pursuant to the delegation of authority by the Secretary of Energy to the Assistant Secretary for Energy Efficiency and Renewable Energy with respect to expenditures within the purview of his responsibility. Consequently, this waiver applies only to EERE projects carried out under the Recovery Act; and only to this project specifically, waiver requests, even for the same or similar items, will be handled individually, because individual factors apply to each project.

Authority: Pub. L. 111–5, section 1605.

Issued in Washington, DC on September 12, 2012.

David T. Danielson
Assistant Secretary
Energy Efficiency and Renewable Energy
U.S. Department of Energy

Editorial Note: This document was received at the Office of the Federal Register
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